

**Did local election officials have a clear understanding of how to implement provisional voting?**

**How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?**

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

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# DISCUSSION

## THE 6 QUESTIONS

## ALTERNATIVES OUTLINE

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised materials for Sept. 6 Meeting

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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM -----



"Tom O'Neill"

09/03/2005 02:46 PM

To klynndyson@eac.gov  
cc  
Subject Revised materials for Sept. 6 Meeting

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today. .

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill



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# EAGLETON INSTITUTE OF POLITICS

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**BRIEFING FOR THE EAC**

**PRELIMINARY FINDINGS  
ON PROVISIONAL VOTING**

with

**Summary responses to 6 Key Questions**

September 6, 2005

Prepared by:  
Eagleton Institute of Politics at Rutgers, The State University of New Jersey  
Moritz College of Law at the Ohio State University

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## **MEMORANDUM**

**TO:** Commissioners and Staff of the EAC

**FROM:** Tom O'Neill, Eagleton Institute of Politics

**DATE:** September 3, 2005

**RE:** Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

- 1) How did states prepare for the HAVA Provisional Voting requirement?
- 2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
- 3) How did litigation affect the implementation of Provisional Voting?
- 4) How effective was Provisional Voting in enfranchising qualified voters?
- 5) Did states and local processes provide for consistent counting of Provisional Ballots?
- 6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6<sup>th</sup> will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction --a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:

- a) Statistical Review of Provisional Voting in the 2004 Election
- b) State Narratives on Provisional Voting
- c) Memorandum: Provisional Voting Litigation by Issue
- d) Memorandum: Provisional Voting Litigation by State
- e) Memorandum: Provisional Voting Litigation

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## **Question 1: How did states prepare for HAVA's provisional voting requirements?**

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, Election Day and post-Election Day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process, including training poll workers. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all of those officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot, and they felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot had been counted as well as instruction establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of those local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the jurisdiction.
- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter

registration database.

- Almost equally rare (14%) were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement to provide voters a way to find out if their provisional ballots had been counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

**Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?**

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In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of “fail-safe voting.” Local election officials in the “old” states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the “old” states found implementing the provisional voting system was “easy,” but that was true of just over half (56%) of officials in the “new” states.
- About half (49%) of officials in the “new” states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the “old” states felt that way.
- Nine out of ten local officials in the “old” states felt that the support received from state government was adequate, compared to 8 in 10 in the “new” states.

In some functions there was little difference in the preparation for provisional voting by “old” and “new” states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about “strategies to reduce the need for voters to use provisional ballots.” But for other functions, training varied widely in both type and amount between the two subgroups:

- More officials in “old” states (7 in 10) than “new” (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more “old” state officials received instruction about using the provisional ballot as an application to update the voter’s registration.

The “new” state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the “new” states, compared with 3 out of 10 in the “old” stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the “new” states felt that more time was needed compared with just over a quarter (26%) of those in “old” states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the “old” states, provisional ballots represented over 2% (2.11%) of the total vote. In the “new” states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between “old” and “New.” In ruling ballots legitimate and including them in the final vote, the “old” states averaged nearly double the number of the “new” states, 58% to 32%. In “old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “new” states.



### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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**SUMMARY:** Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to shape significantly the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process. The nation can anticipate more litigation before the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless. First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA. (It just so happened that a state’s decision not to count wrong-precinct provisional ballots was not a HAVA violation). Second and significantly, the litigation clarified the right of voters to receive provisional ballots, even though they would not be counted. The decision also defined an ancillary right – the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional in the wrong precinct, they would be on notice that it would be a symbolic gesture only. Third, and relatedly, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although

the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the “placeholder” filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state’s highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot’s envelope was missing information as a result of a poll worker’s clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican’s margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state’s legislature took matters into its own hands. The race for the state’s Superintendent of Public Instruction turned on whether approximately 11,000 “wrong precinct” provisional ballots would be counted under state law. The state’s Supreme Court ruled that they

should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – 43 weeks after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County had been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

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The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

### CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a “preferred practice” for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit.

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will

need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

#### **Question 4: How effective was provisional voting in enfranchising qualified voters?**

Answering this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but it may provide data good enough for at least a rough assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

<i>Votes Lost (Millions)</i>	<i>Cause</i>
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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\* Another interpretation of the data should be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each election asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%.

Several states came to just that conclusion. Legislative activity is evidence that states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

- Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.
- Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions, and those are described in the answer to Question 3.

Aggregate data from the states indicates that some states were more effective than others in enfranchising voters through the provisional ballot. In states that used a provisional ballot before HAVA ("old" states), a higher proportion of voters were enfranchised by provisional ballots than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "new" states have a political culture different from the "old" states. That is, underlying characteristics of the "new" states political system may be the reason they had not adopted some form of provisional voting as the "old" states did.

The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the

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individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will be harder and take longer to achieve.

### **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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HAVA gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Little consistency existed among and within states in the way provisional ballots were used in 2004.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots was counted than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
- In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.

- In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
  - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.
- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).
  - States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.
    - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
    - If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

#### **High-Low rating of Percent of PV Ballots Cast as part of Turnout**

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		Total
		Less than 50% Counted	More than 50% Counted	
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17*
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots

\* These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's  $Q = 0.97$ ), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters cast a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because there were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

#### Variation within states

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.

#### Election Official's Perceptions

In addition to the statistical differences among states' handling of provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. The survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether

they came from “old” or “new” States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from “new” states reported receiving more guidance on how to evaluate ballots once cast, while officials from “old” states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from “old” states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from “new” states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from “old” states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from “new” states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. Eight out of ten officials from experienced states reported that “there is a need to offer voters the opportunity to cast provisional ballots”, while only 6 out of 10 from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

### Conclusion

States that previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflect different political cultures among the states, consistency among the states will prove more difficult to achieve.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country. But as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

## **Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

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This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be “useful” or “very useful,” the crucial question is how well did the process work on Election Day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter's registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology –

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such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were “useful,” the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: New Peer Review Group Member

Karen Lynn-Dyson  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM —



"Tom O'Neill"

09/02/2005 04:48 PM

To tokaji.1@osu.edu, ireed@rutgers.edu,  
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rmandel@rci.rutgers.edu, rmandel@rci.rutgers.edu  
cc klynndyson@eac.gov  
Subject New Peer Review Group Member

Tim O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University in Maryland, has agreed to serve on the Peer Review Committee.

Tom O'Neill

022741

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
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Subject Fw: EAC Briefing Materials - Tues. 9/6

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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:34 AM —



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09/01/2005 06:20 PM

Please respond to  
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cc "Tom O'Neill"

Subject EAC Briefing Materials - Tues. 9/6

Hi Karen,

Attached please find a summary of answers to the questions guiding our Provisional Voting analysis in preparation for our meeting with the EAC on Tuesday, Sept. 9<sup>th</sup>. Please distribute this document in advance of the briefing to your colleagues who will be attending. There are several appendix documents that have been fedex'ed to you for delivery by tomorrow at noon. These documents form a large part of our original research, and are referred to in our summary responses to the 6 guiding questions. I am sending 3 copies of the appendix documents for you and your colleagues. Additionally, Mr. O'Neill will be bringing you a CD-rom with all of the enclosure documents for your convenience.

If you have any questions, please do not hesitate to call or email me. Enjoy the holiday weekend.

Best,  
Lauren Vincelli

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# EAGLETON INSTITUTE OF POLITICS

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## **BREIFING FOR THE EAC**

### **PRELIMINARY FINDINGS ON PROVISIONAL VOTING**

September 1, 2005

Prepared by:  
Eagleton Institute of Politics at Rutgers, The State University of New Jersey  
Moritz College of Law at the Ohio State University

022743

## MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 6, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings to date based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

- 1) How did states prepare for the HAVA Provisional Voting requirement?
- 2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
- 3) How did litigation affect the implementation of Provisional Voting?
- 4) How effective was Provisional Voting in enfranchising qualified voters?
- 5) Did states and local processes provide for consistent counting of Provisional Ballots?
- 6) Did local election officials have a clear understanding of how to implement Provisional Voting?

Our discussion on the 6<sup>th</sup> will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

### Appendices:

- a) Statistical Review of Provisional Voting in the 2004 Election
- b) State Narratives on Provisional Voting
- c) Memorandum: Provisional Voting Litigation by Issue
- d) Memorandum: Provisional Voting Litigation by State
- e) Memorandum: Provisional Voting Litigation

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## **Question 1: How did states prepare for HAVA provisional voting requirements?**

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, election day and post-election day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define “jurisdiction,” adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process and the local and intermediary level of government. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all officials received instruction from their state government on how to determine a voter’s eligibility to receive a provisional ballot and felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot was counted as well as instruction for establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter’s registration.
- Only about half of local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters’ assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the

jurisdiction.

- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter registration database.
- Almost equally rare (14%) was training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement of providing that voters have a way to find out if their provisional ballots counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.



**Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those did not?**

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In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of “fail-safe voting.” Local election officials in the “Old” states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the “Old” states found implementing the provisional voting system was “easy,” but that was true of just over half (56%) of officials in the “New” states.
- About half (49%) of officials in the “New” states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the “Old” states felt that way.
- Nine out of ten local officials in the “Old” states felt that the support received from state government was adequate, compared to 8 in 10 in the “New” states.

In some functions there was little difference in the preparation for provisional voting by “Old” and “New” states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about “strategies to reduce the need for voters to use provisional ballots.” But for other functions, training varied widely in the type and amount between the two types of states:

- More officials in “Old” states (7 in 10) than “New” (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more “Old” state officials received instruction about using the provisional ballot as an application to update the voter’s registration.

The “New” state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the “New” states, compared with 3 out of 10 in the “Old” stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the “New” states felt that more time was needed compared with just over a quarter (26%) of those in “Old” states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the “Old” states, provisional ballots represented over 2% (2.11%) of the total vote. In the “New” states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between “Old” and “New.” In ruling ballots legitimate and including them in the final vote, the “Old” states averaged nearly double the number of the “New” states, 58% to 32%. In “Old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “New” states.

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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**SUMMARY:** Litigation just before the 2004 election upheld the principle that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to significantly shape the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process, and the nation can anticipate more of it in advance of the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

A flurry of litigation occurred around the country in October 2004 concerning the so-called “wrong precinct issue” – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless. First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA. (It just so happened that a state’s decision not to count wrong-precinct provisional ballots was not a HAVA violation). Second and significantly, the litigation clarified the right of voters to receive provisional ballots, even though they would not be counted. The decision also defined an ancillary right – the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional in the wrong precinct, they

would be on notice that it would be a symbolic gesture only. Third, and relatedly, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

To a lesser extent there was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the “placeholder” filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state’s highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot’s envelope was missing information as a result of a poll worker’s clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican’s margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – 43 weeks after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County has been rejected because they could not be matched with a signature in the county's current electronic

database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

#### CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a “preferred practice” for states to preclude

any post-election challenges that could have been filed in a pre-election lawsuit. [Tom: I'm not sure whether to include these last two sentences, but they are responsive to your question.]

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

#### **Question 4: How effective was provisional voting in enfranchising qualified voters?**

Providing an answer to this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but may provide data that begins to assess the order of magnitude of the pool of potential voters who might have been helped by the provisional ballot process.

<b>Votes Lost (Millions)</b>	<b>Cause</b>
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, concluding that

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\* Since this tentative conclusion is based on imprecise estimates, caution suggests another interpretation of the data be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote.

Survey respondents tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states.

In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%. We prefer the conclusion in the text, but this alternate interpretation may well be correct.



there is considerable room for improvement seems reasonable.

Several states came to just that conclusion. Legislative activity suggests that the states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to areas of concern.

- Not enough time to examine and count the provisional ballots: Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.
- Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions.

- In Washington State a long legal battle over the gubernatorial election resulted in calls for reform in the way provisional ballots are evaluated. But much of the furor was over provisional ballots that possibly should not have been counted rather than over ballots that were rejected in error.
- In North Carolina's much-disputed election for Superintendent of Public Instruction, the most contentious debate concerning provisional ballots hinged on the issue of ballots cast outside the correct precinct rather than the qualifications of the voter to cast the ballot.

In general, the courts have been clear that a voter's ballot should not be rejected when the invalidity was caused by a ministerial error by election officials. In New York, the court placed upon election officials a duty to direct voters to the correct district once they are inside the correct polling place, but the voter has the obligation to arrive at the correct polling place.

The courts have also held that states cannot categorically deny provisional ballots to voters, a holding that broadens the concept of provisional voting beyond the fail-safe concept. Unfortunately, these decisions could operate to decrease the chance that a ballot will actually be counted. Even if a precinct worker determines that a potential voter is seeking to vote in the wrong precinct, the voter cannot be denied a provisional ballot and simply directed to the correct polling place. If the voter demands a provisional ballot, it must be provided, even if it will not be counted if cast in the wrong precinct. Clearer instructions to poll worker and voters could ameliorate the unintended consequences of these court decisions.

Ultimately, second-guessing the determinations of election officials on counting ballots is likely

to be fruitless outside of a court hearing on particular ballots and specific decisions. Aggregate data from the states, however, indicates that some states were more effective than others in enfranchising voters through the provisional ballot.

In states that used a provisional ballot before HAVA ("Old" states), a higher proportion of voters were enfranchised by provisional ballots than in "New" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is considerable room for improvement.

If experience with provisional voting does turn out to be the key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "New" states was the result of administrative problems stemming from inexperience will improvement be automatic. The other possibility is that the "New" states have a political culture different from the "Old" states. That is, underlying characteristics of the "New" states political system may be the reason they had not adopted some form of provisional voting as the "Old" states did.

The "New" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some authority to state or federal directives. If the inconsistent performance in the "New" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballot will be harder and take longer to achieve.

### **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

---

HAVA was designed to provide registered voters who found themselves absent from the voters' list at polling places a way to exercise their right to vote. It requires that certain voters be given provisional ballots and that those ballots be counted if they are later determined eligible under state law. The act gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine if provisional ballots that are cast should be counted.

There was considerable variation in how provisional ballots were distributed and counted in the 2004 election. Little consistency existed among and within states in the way provisional ballots were used.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots were counted than in states implementing provisional voting for the first time.

In the 25 states that had some experience with provisional voting before HAVA, a higher portion to the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.

- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states provisional ballots accounted for only 0.23% of the total vote.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
  - In the 4 states that simply matched signatures nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 States that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were certified
  - In the 14 states that required an affidavit just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted.
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.
- Voter registration databases provided information that reduced the number of provisional ballots counted. In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%).
- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.
  - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

A final word about the variation among the states:

High-Low rating of Percent of PV Ballots Cast as part of Turnout

\* High-Low rating of Percent of PV Ballots Cast that were Counted Cross-tabulation

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		Total
		Less than 50% Counted	More than 50% Counted	
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17*
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's  $Q = 0.97$ ), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters cast a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because there were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

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\* These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also impact the use of provisional ballots.

#### Election Official's Perceptions

In addition to the statistical differences among how states handled provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. A survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "Old" or "New" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. 81% of officials from experienced states reported that “there is a need to offer voters the opportunity to cast provisional ballots”, while only 62% from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

### Conclusion

States that had previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA states had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflects different political cultures among the states, consistency among the states may take longer to increase.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country, but as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA’s requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

---

This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be “useful” or “very useful,” the crucial question is how well did the process work on election day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter’s registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot



Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology – such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were “useful,” the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:09 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Peer Review Group

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:07 AM —



"Tom O'Neill"

08/19/2005 02:20 PM

To klynndyson@eac.gov  
cc  
Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill



RecruitmentStatus.doc

022763

**STATUS OF PEER REVIEW GROUP RECRUITMENT**

(As of August 17, 2005)

**R. Michael Alvarez, Ph.D.**

Professor of Political Science  
California Institute of Technology

YES/CONFIRMED

**Guy-Uriel Charles**

Associate Professor, School of Law  
University of Minnesota  
[REDACTED]

YES

**Brad Clark**

Professor of Law  
George Washington University School of Law

NO

**Pamela Susan Karlan**

Montgomery Professor of Public Interest Law  
Stanford Law School  
[REDACTED]

YES

**Martha E. Kropf, Ph.D.**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
816-235-5948; KropfM@umkc.edu

YES/CONFIRMED

**Daniel H. Lowenstein**

Professor of Law  
UCLA  
[REDACTED]

YES

**John F. Manning**

Professor  
Harvard Law School

NO RESPONSE

**Tim Storey**

Program Principal  
Legislative Management Program  
National Conference of State Legislatures

YES/CONFIRMED

**Peter G. Verniero, Esq.**

Counsel  
Sills, Cummis, Epstein and Gross, PC  
(Former NJ Attorney General and Supreme Court Justice)

YES/CONFIRMED

022764

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:04 AM

To: Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject: Fw: Survey Cover Letter and Questionnaire

This is an important e-mail ( for audit purposes) related to the large survey of election officials which Eagleton did.

By law, the EAC could not do this survey without going through a lengthy OMB approval process. Eagleton was free to do this survey as long as it was for their clarification purposes and they did not seek our advice on the survey.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:59 AM -----



"Tom O'Neill"

07/07/2005 11:19 AM

To: klynndyson@eac.gov  
cc  
Subject: Re: Survey Cover Letter and Questionnaire

Karen,

We share the understanding expressed below. Attached is the revised cover letter to local election officials.

Thanks,

Tom

----- Original Message -----

**From:** klynndyson@eac.gov

**To:** [REDACTED]

**Cc:** cpaquette@eac.gov

**Sent:** Thursday, July 07, 2005 11:14 AM

**Subject:** Re: Survey Cover Letter and Questionnaire

Tom-

A review of the EAC's Statement of Work for Research Assistance to develop Voluntary Guidance on

022765

Provisional Voting and Voting Identification procedures, does not require that a survey of the elections community, regarding their experiences with provisional voting or voter identification be conducted. Therefore, the EAC is not required to review or approve such a survey.

Should Eagleton elect to conduct such a survey to further educate and inform their work on these topics, they may conduct such a survey on their behalf only.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" 

07/06/2005 11:11 AM

To klynndyson@eac.gov

cc

Subject Survey Cover Letter and Questionnaire

Karen,

Attached are the two documents we just discussed. The cover letter will go to 2800+ election officials around the country. It alerts the recipients that they may be called to participate in a survey as a part of our research for the EAC. The survey will, in fact, interview only 400 of the local election officials, but notifying them all is necessary because the selection of those called will be random, and, if the surveyors cannot reach the first county drawn for the sample, they will move on to the next. The need to have your review of the letter is the most urgent. Unless it goes to SBRI, the survey firm that will make the actual calls, today, we will fall behind an already tight schedule.

The questionnaire would also benefit from your review. As you know, question wording is an art. A good question elicits the information sought without biasing the response. Your review, however, can help ensure that the survey elicits information that EAC will find useful. We will rely on the results to draw conclusions about provisional voting as experienced by county-level election officials. It inquires about the quality and timeliness of information and training they may have received from state-level officials and about the information and training that they, in turn, passed on to poll workers. I don't believe this information is available anywhere else. We are over-sampling officials in states that did not offer provisional ballots before 2004 so that we can draw some inferences about the difference between their experience and the experience of officials for whom provisional voting was more familiar. These inferences may provide helpful in shaping the guidance the EAC offers the states for the 2006 election.

022766

Your comments on the questionnaire are also needed urgently, but I believe we can hold SBRI at bay on this document until tomorrow.

As I mentioned, my computer died on Monday, so I have only sporadic access to email. I will have access until about 2 today and then won't be back on-line until early evening. You can always reach me by phone at 908-794-1030. If you would like to send a fax, that number is 609-737-8674.

Thanks,



Tom RevisedFinal cover letter 070607.doc

022767



EAGLETON INSTITUTE OF POLITICS  
— CENTER FOR PUBLIC INTEREST POLLING —

PROVISIONAL VOTING SURVEY

Sample: Local Elections Officials  
National sample: 400 telephone interviews

Draft Version: June 28, 2005

**Initial Screener**

Hello, my name is \_\_\_\_\_ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a survey for the U.S. Election Assistance Commission (EAC), a federal government commission, to study provisional voting based on experiences from the 2004 election. May I please speak to the individual who was responsible for supervising the election at the county, borough, municipality, or parish level?

[IF UNSURE WHO THIS INDIVIDUAL IS:]

In particular, may I please speak to the individual who was responsible for overseeing voting procedures for the 2004 election at the county, borough, municipality, or parish level such as the Registrar of Elections, County Clerk, Commissioner of Elections, Administrator of Elections, or Clerk of Court?

**Consent**

Hello, my name is \_\_\_\_\_ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a survey for the U.S. Election Assistance Commission (EAC), a federal government commission, to study provisional voting based on experiences from the 2004 election. We recently sent you a letter requesting your participation in the confidential survey we are conducting with county elections officials as part of a national contract with the Elections Assistance Commission (EAC). We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. The information you will be sharing today will be used to provide provisional voting policy recommendations. This information will

Provisional Voting Survey - Eagleton Center for Public Interest Polling

be maintained at a secure site and your name will not be identified in the report. So, please do not hesitate to share all the information you have.

You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

**IF NECESSARY:** If you should have any questions about the study, you may contact the Research Project Coordinator, April Rapp, at the Eagleton Center for Public Interest Polling at 732-932-9384 ext. 261.

**IF RESPONDENT DECLINES TO PARTICIPATE, ADDITIONAL PRODDING NEEDED:**

—Your participation is very important because only 400 election officials have been randomly selected for this survey and your views will be used to provide provisional voting policy recommendations. We would be happy to fax you a letter outlining the study objectives. [If yes, can I please have your fax number?] (RECORD FAX NUMBER)

**Screeners**

1. On Election Day, November 2<sup>nd</sup>, 2004 was it your responsibility to supervise the election at the county, borough, municipality, or parish level?

- |     |              |             |
|-----|--------------|-------------|
| 1.  | Yes          | (GOTO Q2)   |
| 2.  | No           | (GOTO Q1a)  |
| 97. | [Don't Know] | (TERMINATE) |
| 99. | [Refused]    | (TERMINATE) |

1a. May I please have the name and phone number of the individual who was responsible for supervising the 2004 election at the county, borough, municipality, or parish level?

[RECORD NAME/PHONE NUMBER OF REFERRAL] (THANK AND TERMINATE)



## **Jurisdiction**

2. Which of the following best characterizes your job title on Election Day, November 2<sup>nd</sup>, 2004?

### **(READ AND ROTATE)**

1. Registrar of Elections
  2. County Clerk
  3. Commissioner of Elections
  4. Administrator of Elections
  5. Clerk of Court
  6. [Other] (specify) (VOL)
  97. [Don't Know] (VOL)
  99. [Refused] (VOL)
3. Is your jurisdiction characterized as a county, borough, municipality, parish, or something else?

### **(READ AND ROTATE)**

1. County
2. Borough
3. Municipality
4. Parish
5. Something else (specify)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

## **General: Provisional Voting**

Now, I would like to ask you some questions about provisional voting.

4. When was provisional voting implemented in your state? (READ LIST)

1. In 2004 before Election Day
2. Sometime during 2003
3. Sometime during 2002
4. At some point before 2002
97. [Don't Know] (VOL)
99. [Refused] (VOL)

5. What's your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

1. Less than 100
2. Between 100 to just under 500
3. Between 500 to just under 1000
4. 1000 or more
97. [Don't Know] (VOL)
99. [Refused] (VOL)

**(ASK ONLY IF Q5=1-4)**

6. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

1. A lot
2. Some
3. Very few
4. None at all
97. [Don't Know] (VOL)
99. [Refused] (VOL)

7. In your opinion, which of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

**(READ AND ROTATE)**

1. Individual's name not listed on the voter registration rolls
2. First time voters couldn't provide the proper identification
3. Voters eligibility challenged
4. Registered voters could not provide the proper identification
5. Other (specify) (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

8. In your opinion, which of the following, if any, prevented provisional ballots from being validated and ultimately counted in the 2004 Election?

**(READ AND ROTATE)**

1. Individual failed to provide the identification required to validate the provisional ballot
2. Signature on the provisional ballot did not match the signature on the registration form
3. Provisional ballot cast in the incorrect voting precinct
4. Individual was not registered
5. Other (specify) (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

<b>Pre-Election Experience: Instructions and Information Received (Content and Quality )</b>
--

9. Were provisional voting instructions provided by the state government in the 2004 Election – as a matter of law, administrative procedure, or did the state not provide instructions for provisional voting?
1. State law
  2. Administrative procedure
  3. State did not provide instructions for provisional voting (GOTO Q.23)
  4. Other: (specify) (VOL) (GOTO Q.23)
  5. None of the above (VOL) (GOTO Q.23)
  97. [Don't Know] (VOL) (GOTO Q.23)
  99. [Refused] (VOL) (GOTO Q.23)

**(ASK ONLY IF Q9=1-2)**

**STATE GOVERNMENT INSTRUCTIONS AND INFORMATION**

10. Which of the following provisional voting instructions, if any, did you receive from the state government?

**(ACCEPT MULTIPLE RESPONSES; ROTATE LIST; PAUSE AFTER EACH RESPONSE)**

1. How to administer provisional voting
2. Who is eligible to vote using a provisional ballot
3. How individuals vote using a provisional ballot
4. The location where individuals can vote by provisional ballot
5. If the provisional ballot is used as an application to change the voter's registration
6. How to verify the voter's eligibility to cast a provisional ballot
7. Poll worker training
8. How to provide voters with the opportunity to verify if their provisional ballot was counted
9. What voter identification is required to cast a provisional ballot
10. Guidelines for which provisional ballots are to be counted
11. Strategies to reduce the need for voters to use provisional ballots
12. Other (specify) (VOL)
13. All of the above (VOL)
14. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

**(ASK ONLY IF Q10=1)**

11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions on how to administer provisional voting -- very useful, somewhat useful, not very useful, or not useful at all?

1. Very useful
2. Somewhat useful
3. Not very useful
4. Not useful at all
97. [Don't know] (VOL)
99. [Refused] (VOL)

**(ASK ONLY IF Q10=2)**

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for determining who is eligible to vote using a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=3)**

13. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions on how individuals vote using a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=4)**

14. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the location where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=5)**

15. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for if the provisional ballot is used as an application to change the voter's registration -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=6)**

16. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to verify the voter's eligibility to cast a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=7)**

17. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on poll worker training -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

**(ASK ONLY IF Q10=8)**

18. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?
1. Very useful
  2. Somewhat useful
  3. Not very useful
  4. Not useful at all
  97. [Don't know] (VOL)
  99. [Refused] (VOL)

**(ASK ONLY IF Q10=9)**

19. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for what voter identification is required to cast a provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?
1. Very useful
  2. Somewhat useful
  3. Not very useful
  4. Not useful at all
  97. [Don't know] (VOL)
  99. [Refused] (VOL)

**(ASK ONLY IF Q10=10)**

20. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines by which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?
1. Very useful
  2. Somewhat useful
  3. Not very useful
  4. Not useful at all
  97. [Don't know] (VOL)
  99. [Refused] (VOL)

(ASK ONLY IF Q10=11)

21. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

(ASK ONLY IF Q22=1-11)

22. Thinking generally, how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

- 1. Very useful
- 2. Somewhat useful
- 3. Not very useful
- 4. Not useful at all
- 97. [Don't know] (VOL)
- 99. [Refused] (VOL)

<b>Implementation of Instructions and Distribution of Information to Election Employees</b>
---

Now I'm going to ask you some questions about poll worker training.

23. Please tell me how the provisional voting instructions and information you received were provided to poll workers. If you don't know how the information was provided to poll workers, just tell me and we'll move on.

(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM AND ROTATE LIST)

- 1. Sent a letter
- 2. Sent an email
- 3. Held a meeting
- 4. Conducted an internal informational session or workshop
- 5. Hired a third-party or independent firm to conduct a training course
- 6. Other (specify) (VOL)
- 7. None of the above (VOL)
- 97. [Don't know] (VOL)

Provisional Voting Survey - Eagleton Center for Public Interest Polling



99. [Refused] (VOL)
24. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

**(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM AND ROTATE LIST)**

1. Access to a list of eligible voters in the jurisdiction
2. Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
3. Maps of adjacent precincts for poll workers to help voters locate their residence and corresponding polling place
4. Additional staff such as "greeters" at polling places to direct voters to the correct polling location
5. Other (specify) (VOL)
6. None of the above (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed:

**(READ AND ROTATE Q.25 – Q.32)**

[PROBE: Would you say that is very successfully, somewhat successfully, not very successfully, or not successfully at all?]

1. Very successfully
  2. Somewhat successfully
  3. Not very successfully
  4. Not successfully at all
  97. [Don't Know] (VOL)
  99. [Refused] (VOL)
25. Provide training to poll workers on how to administer provisional ballots.
26. Provide written procedures to poll workers on how to administer provisional ballots.
27. Provide poll workers with written procedures on the casting of provisional ballots.
28. Provide poll workers with written procedures on the counting of provisional ballots.
29. Provide poll worker training for the casting of provisional ballots.
30. Provide poll worker training for the counting of provisional ballots.

31. Make information available to help poll workers determine voters' assigned precinct or polling place.
32. Provide training to help poll workers determine voters' assigned precinct or polling place.

<b>Post-Election Experience: Counting Ballots</b>
---

33. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

**(ACCEPT MULTIPLE RESPONSES; READ AND ROTATE LIST)**

1. Notification by mail
  2. Dedicated Telephone Hotline
  3. Email notification
  4. Website confirmation
  5. Telephone local or county election office
  6. All of the above (VOL)
  7. None of the above (VOL)
  8. Other (specify) (VOL)
  97. [Don't Know] (VOL)
  99. [Refused] (VOL)
34. How confident are you that provisional ballots were properly distributed to voters?
1. Very confident
  2. Somewhat confident
  3. Not very confident
  4. Not at all confident
  97. [Don't Know]
  99. [Refused]
35. How confident are you that provisional ballots were accurately validated?
1. Very confident
  2. Somewhat confident
  3. Not very confident
  4. Not at all confident
  97. [Don't Know] (VOL)
  99. [Refused] (VOL)

36. How confident are you that validated provisional ballots were counted?

- 1. Very confident
- 2. Somewhat confident
- 3. Not very confident
- 4. Not at all confident
- 97. [Don't Know] (VOL)
- 99. [Refused] (VOL)

### General Perceptions

37. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(RANDOMLY ROTATE 1-5).

- 1. Training of poll workers
- 2. Length of time provided to implement provisional voting
- 3. Clarity of instruction received from your State Government
- 4. Adequacy of instruction received from your State Government
- 5. Available staff at the polling place
- 6. Other (specify): (VOL)
- 7. All of the above (VOL)
- 8. None of the above (VOL)
- 97. [Don't Know] (VOL)
- 99. [Refused] (VOL)

Please tell me how much you agree or disagree with the following statements about provisional voting in your jurisdiction for the 2004 Election.

(READ AND ROTATE Q.38 –Q.49)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

- 1. Agree strongly
- 2. Agree somewhat
- 3. Neither agree nor disagree
- 4. Disagree somewhat
- 5. Disagree strongly
- 97. [Don't Know] (VOL)
- 99. [Refused] (VOL)

38. More training was needed on how to administer provisional ballots.

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39. More funding was needed to educate voters of their rights to cast a provisional ballot.
40. More information should have been provided to voters about where provisional ballots must be cast in order to be counted.
41. More information was needed for poll workers to determine the voter's assigned precinct and polling place.
42. More time was needed to implement provisional voting procedures.
43. The lack of training created problems implementing the provisional voting requirements.
44. The provisional voting system was easy to implement.
45. The provisional voting system in my polling jurisdiction was a success.
46. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.
47. Adequate support was provided to me to assist in the implementation of provisional voting.
48. I feel that voters in my jurisdiction were provided adequate information to validate if their provisional ballots were counted.
49. The lack of information created problems implementing the provisional voting requirements.

## Recommendations for the Future

50. Now I am going to read you a list of items, please tell me which one you believe is the most important change needed in the implementation of provisional voting.

### (RANDOMLY ROTATE 1-6)

1. More funding for poll worker training
2. More time for poll worker training
3. Better instruction from the Federal Government
4. Better instruction from the State Government
5. More instruction from the Federal Government
6. More instruction from the State Government
7. Other: specify (VOL)
8. All of the above (VOL)
9. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

Please tell me how much you agree or disagree with the following statements about provisional voting.

### (READ AND ROTATE Q.51-Q.61)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

1. Agree strongly
  2. Agree somewhat
  3. Neither agree nor disagree
  4. Disagree somewhat
  5. Disagree strongly
  97. [Don't Know] (VOL)
  99. [Refused] (VOL)
51. Statewide voter registration database would decrease the need for voters to cast provisional ballots.
52. State sponsored website designed for individuals to check registration status online would decrease the need for voters to cast provisional ballots.
53. Provisional voting protects the rights of voters by ensuring that people who are eligible to vote are allowed to do so and have their ballots counted.

54. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.
55. Provisional voting helps election officials maintain more accurate registration databases.
56. Provisional voting causes delays in the final vote tally while voter eligibility is being verified.
57. Provisional voting may prevent voters from keeping their registration current.
58. Provisional voting compromises voter anonymity.
59. Provisional voting creates the opportunity for voter fraud.
60. Provisional voting creates unnecessary problems for election officials and poll workers.
61. Provisional voting can be avoided by the adoption of different registration procedures.
62. Which of the following do you think would be the most effective in increasing the number of provisional ballots validated and ultimately counted in an election?

**(READ AND ROTATE)**

1. In-precinct provisional voting only
2. Provisional voting from a central location rather than polling places
3. In-jurisdiction provisional voting only
4. Provide voters whose ballot was rejected because they failed to complete part of their voter registration form with a "second chance"
5. Provide poll workers access to a list of eligible voters in the jurisdiction
6. Provide a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
7. Provide "greeters" at polling places to direct voters to the correct polling location
8. Other (specify) (VOL)
9. All of the above (VOL)
10. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

63. Which of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

**(READ AND ROTATE)**

1. Statewide voter registration database available at polling places
2. Use the provisional ballot application as a request to change the voter's registration
3. Provide additional staff such as "greeters" at polling places to direct voters to the correct polling location
4. State sponsored website dedicated to enabling individuals to check registration status online
5. Provide poll workers access to a list of eligible voters in the jurisdiction
6. Provide a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction
7. Other (specify) (VOL)
8. All of the above (VOL)
9. None of the above (VOL)
97. [Don't Know] (VOL)
99. [Refused] (VOL)

**Demographics (ASK ALL)**

I only have a few more questions for statistical purposes....

- D1. As election official were you hired, appointed, or elected to the position?

1. Hired
2. Appointed
3. Elected
4. Other/Specify (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

- D2. For how many years have you served as the election official? [CODE IN WHOLE NUMBERS – IF LESS THAN 1 YEAR RECORD AS "LESS THAN ONE YEAR"]

D3. For statistical purposes only, could you please tell me your ethnic or racial background?

1. White/Caucasian
2. Hispanic/Latino
3. African-American/Black
4. Asian American/Asian
5. Native American
6. Other/Specify (VOL)
97. [Don't know] (VOL)
99. [Refused] (VOL)

D4. Interviewer please record gender.

1. Female
2. Male

*That completes our survey. Thank you very much for your time and cooperation.*

Read-In From Sample

A. STATE

B. COUNTY

C. OLD PROVISIONAL VOTING STATES (27 States/200 Total Responses)

1. AK, AZ, AR, CA, DC, FL, IA, KS, MD, NM, NY, NC, OR, RI, SC, VA, WA, WV, CO, NE, NJ, OH, AL, KY, MI, MS, TX

D. NEW PROVISIONAL VOTING STATES (17 States/200 Total Responses)

1. CT, DE, GA, HI, IL, IN, LA, MA, MO, MT, NV, OK, PA, SD, TN, UT, VT

E. REGION

1. West (MT, CO, NM, AZ, UT, NV, WA, OR, CA, AK, HI)
2. South (DE, MD, DC, VA, WV, NC, SC, GA, FL, KY, TN, AL, MS, AR, LA, OK, TX)
3. Midwest (OH, IN, IL, MI, IA, MO, SD, NE, KS)
4. Northeast (VT, MA, RI, CT, NY, NJ, PA)

F. BATTLEGROUND STATES (FL, IA, MO, NM, OH, OR, PA, WV)

G. NONBATTLEGROUND STATES (MT, CO, AZ, UT, NV, WA, CA, AK, HI, DE, MD, DC, VA, NC, SC, GA, KY, TN, AL, MS, AR, LA, OK, TX, IN, IL, MI, SD, NE, KS, VT, MA, RI, CT, NY, NJ)







Eagleton Institute of Politics  
191 Ryders Lane, New Brunswick NJ 08901

DATE

NAME

TITLE

ADDRESS

CITY STATE ZIP

Dear NAME,

The U.S. Election Assistance Commission (EAC) has awarded Rutgers, The State University of New Jersey, a contract to study county elections officials' experiences with provisional voting in the 2004 national election. This research will address key issues related to provisional voting in the context of effective election administration, voter access, and ballot security. The study's findings will be used to provide recommendations for the EAC to consider in the development of its guidance to the states in 2006.

The EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency that provides federal funds to states to upgrade voting systems and improve election administration. The EAC publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

Participants in this study will be randomly selected and asked to share their experiences administering the provisional voting process in the 2004 election. The study will be conducted July 18<sup>th</sup> through August 5<sup>th</sup>. During that period a survey researcher may call you if you are, in fact, chosen at random from a national list of election officials. The researcher will ask you questions about your experience with provisional voting, your evaluation of the process, and your recommendations to improve it. The survey will take approximately 10-15 minutes. All of your answers will be completely confidential, and no statement or comment you make will be ascribed to you in our report of findings.

At the contract's conclusion, we will present a report to the EAC including analysis of provisional voting procedures as well as recommendations for future practices and procedures. The guidance document based on our research will be published by the EAC in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the study will be important in assuring that it reflects the views of election officials who have direct experience with provisional voting. Thank you for your time.

Sincerely,

[scanned signature]

Ruth B. Mandel  
Director and Board of Governors Professor of Politics

022787

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:00 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: July 12 and Peer Review Group

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:58 AM -----



"Tom O'Neill"

06/27/2005 09:52 AM

To klynndyson@eac.gov  
cc

Subject July 12 and Peer Review Group

Karen:

The Eagleton project team usually meets on Tuesdays from 9:30 -- 11. At tomorrow's meeting I'll confirm with the group that we will meet on July 12, if that will fit your schedule. If that is a bad time for you, we have moved our meeting time before and can do so again if we can align participants' calendars. This week for the first time, Laura Williams --representing Moritz-- will join the session by telephone. For the meeting on the 12th I'll try to arrange for Ned Foley and Dan Tokaji to participate as well.

On the Peer Review Group

Your request to include the election officials on the group caused us to think anew about its purpose and composition. We agreed that election officials would add a useful dose of real world experience to the research. One of them could be Peter Veniero, who as AG (where he served before appointment to our Supreme Court) was New Jersey's chief election official. We would like Tom Wilkey to suggest a couple of former, senior election officials who could contribute to the PRG's work. While the PRG needs the experience of election administrators, we believe that perspective can be conveyed best by a senior, former official who is not appointed to represent a group of such officials --only to represent him or herself. We believe the group's advice would be most useful if came from people with the perspective provided by now being some distance from the daily fray.

This analysis emerged from a Friday conference call in which Ingrid Reed, Ned Foley, Laura Williams and I rethought the composition of the PRG. We concluded that the group should not, after all, include members from organizations that have taken advocacy positions on the issues we are researching. We agreed that the PRG should focus on methodologies and research findings rather than debate policy outcomes. PRG members should be free to represent themselves, rather than argue from an existing institutional position on policy. The PRG is not an advisory committee or a group of stakeholders to vet and take some ownership of policy recommendations. We'll consult the stakeholders separately, beginning with the list of groups in the proposal.

To replace those from advocacy organizations, we believe it would be preferable to add more members from academia and the law, such as Pam Karlan, Guy-Uriel Charles, or Dan Lowenstein, whose CVs are summarized on the attachment. Finally, I will draft a mission statement for the PRG. Attached is a revised

022788

list of proposed PRG members, showing 2 slots to be filled by senior, former election officials.

Hope you have received the Gantt chart by now and that it fits your needs.

Ingrid Reed and I will attend the meeting in New York on Thursday and look forward to seeing you there.

Tom

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Friday, June 24, 2005 6:36 PM

**To:** [REDACTED]

**Cc:** twilkey@eac.gov

**Subject:** RE: Peer Review Group

Tom-

I'd like to schedule a conference call among EAC and Eagleton staff for sometime the early part of the week of July 11. Please let me know dates and times on your end and I'll coordinate with staff here.

During the call we can review your monthly report and cover any problems, challenges, needs, etc. that the Eagleton team may have.

Thanks

K

Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

tel:202-566-3123

"Tom O'Neill" [REDACTED]

06/23/2005 02:43 PM

To klynndyson@eac.gov

cc

Subject RE: Peer Review Group

Thanks, Karen.

022789

Tom

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Thursday, June 23, 2005 2:24 PM

**To:** [REDACTED]

**Subject:** Re: Peer Review Group

Tom-

I will be back to you early next week with EAC's feedback on this.

Our initial reaction is that the group needs to include some local and/or state-level election officials, who have first-hand experience with these issues.

We will get you additional names and reactions by mid-week next week.

Thanks

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" [REDACTED]

06/22/2005 03:29 PM

To klynndyson@eac.gov

cc

Subject Peer Review Group

Karen,

As you probably recall, one of the features of our proposal was the creation of a Peer Review Group to look over our findings, conclusions and draft reports before we prepare final drafts for the EAC's review. The EAC asked that before recruiting members of the PRG we submit names for EAC's review. The aim, course, is to assemble a panel that is experienced, informed, and

022790

balanced.

Attached is a list of potential PRG members drawn from academia, the law, and non-profit organizations with interests in this area. Please look it over.

We may conclude that the PRG should also include two or three former government officials now in academia or related fields. We have a conference call with our partners at Moritz planned for tomorrow or Friday to decide a) if former officials should be included in the PRG and b) if so, who they should be. I'll keep you informed of our thinking as it develops.



Tom PROPOSED MEMBERS OF PRGREV.doc

022791

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:59 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Peer Review Group

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:57 AM -----



"Tom O'Neill"

06/22/2005 03:29 PM

To klynndyson@eac.gov  
cc

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Tom



PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

022792

## PROPOSED MEMBERS OF PEER REVIEW GROUP

### **R. Michael Alvarez, Ph.D.**

Professor of Political Science  
California Institute of Technology  
rma@hss.caltech.edu  
626-395-4422

Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

### **Deborah Goldberg, Ph.D**

Program Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
161 Avenue Of The Americas, 12th Floor  
New York, NY 10013  
212-998-6730

Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

### **Martha E. Kropf, Ph.D.**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
816-235-5948; KropfM@umkc.edu

Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

### **Wade Henderson, Esq.**

Executive Director  
Leadership Conference on Civil Rights  
1629 K Street, NW, 10<sup>th</sup> Floor  
Washington, DC 20006

Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

### **Kay Maxwell**

President  
League of Women Voters of the U.S.  
1730 M Street NW, Suite 1000



Washington, DC 20036-4508  
202-429-1965

Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

**Tim Storey**  
Program Principal  
Legislative Management Program  
National Conference of State Legislatures  
7700 East First Place  
Denver, CO 80230  
303-364-7700  
or  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001  
202-624-5400

**Peter G. Veniero, Esq.**  
Counsel  
Sills, Cummis, Epstein and Gross, PC  
One Riverfront Plaza  
Newark, New Jersey 07102  
Tel: 973- 643-7000

Veniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

022794

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:58 AM


To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised Release Draft 2

Goodness- there was a lot of back-and-forth about this silly press release!!

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:55 AM -----

Jeannie Layson/EAC/GOV  
06/14/2005 08:17 AM

To "Tom O'Neill" [REDACTED]  
cc klynndyson@eac.gov, cpaquette@eac.gov  
Subject Re: Revised Release Draft 2 

Tom,

The revised release incorporating our changes is attached. Call me if you have any questions, and thank you for your patience throughout this process. Please let me know when it's released.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100



www.eac.gov Eagleton release rev.doc

022795

# Rutgers

**News**

Office of Media Relations  
ur.rutgers.edu/medrel

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 13, 2005

DRAFT FOR APPROVAL

EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS

## **EAGLETON INSTITUTE OF POLITICS WINS \$560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION**

### **Rutgers Institute to Study Provisional Voting, Voter Identification Procedures**

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a \$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to consider in the development of its guidance to the states for the 2006 elections, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

022796

Eagleton will examine the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of potential alternatives to existing practices and procedures.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Eagleton draft press release

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

—— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:55 AM ——

Jeannie Layson/EAC/GOV  
06/10/2005 12:57 PM

To ghillman@eac.gov, rmartinez@eac.gov,  
pdegregorio@eac.gov  
cc klynndyson@eac.gov, cpaquette@eac.gov,  
jthompson@eac.gov  
Subject Eagleton draft press release

Commissioners,

Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

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022798

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Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?
- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?
- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?
- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?
- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?
- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

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Eagleton release.doc

Jeannie Layson

U.S. Election Assistance Commission

1225 New York Ave., NW

Suite 1100

Washington, DC 20005

Phone: 202-566-3100

[www.eac.gov](http://www.eac.gov)

022800

Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 13, 2005

DRAFT FOR APPROVAL

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Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:55 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised release for Eagleton Research

Darrell-

check you chronology on the various e-mail I have sent you related to the contract press release. I believe this is the one that was the final. You only need to include the final version in the files.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:52 AM ---



"Tom O'Neill"

06/08/2005 12:47 PM

To jlayson@eac.gov  
cc klynndyson@eac.gov, john.weingart@rutgers.edu  
Subject Revised release for Eagleton Research



NewsRelease1.doc  
Jeannie:

Attached is the news release we discussed yesterday, with the addition you requested.

As I mentioned, we are eager to make this announcement.

Thanks,

Tom

022803

# Rutgers

**News**

Office of Media Relations  
ur.rutgers.edu/medrel

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Contact: Steve Manas, 732/932-7084, ext. 612, E-mail: smanas@ur.rutgers.edu

June 2, 2005

DRAFT FOR APPROVAL

**EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS**

**EAGLETON INSTITUTE OF POLITICS WINS \$560,000 CONTRACT  
FROM U.S. ELECTION ASSISTANCE COMMISSION**

**Rutgers Institute to Study Provisional Voting, Voter Identification Procedures**

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (USEAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a \$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

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-more-

022804

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EAC'S COMMUNICATIONS MANAGER JEANNIE LAYSON WANTS THE RELEASE TO INCLUDE A PARAGRAPH SUMMARIZING THE METHODS WE WILL USE TO ANSWER THE QUESTIONS POSED IN THE BULLETED LIST ABOVE. SHE WANTS TO REVIEW THE REVISED RELEASE BEFORE SUBMITTING TO THE EAC CHAIR FOR APPROVAL.

022805

202-566-3103 or [jlayson@eac.gov](mailto:jlayson@eac.gov)



050602-x  
EIP-USEACVoterContract.rel.ed

022806

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: June 30 Hearing Panelists

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM -----



"Tom O'Neill"

06/02/2005 05:30 PM

To jthompson@eac.gov  
cc ireed@rutgers.edu, "Edward Foley" <foley.33@osu.edu>, klynndyson@eac.gov  
Subject June 30 Hearing Panelists

Julie:

Thanks for you call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based

022807

researchers who can present the view that stricter Voter ID requirement do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

**JUNE 30 HEARING**  
**POSSIBLE PANELISTS OR TOPICS**

Possible States to be represented by one or more panelists

**Mississippi**

Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

**Michigan**

Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

**New York**

Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

**Pennsylvania**

Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

**Wisconsin**

Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

**Academics on Voter ID, Turnout, and Vote Fraud**

**Spencer Overton**

Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

**John Fortier**

Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

**Lorraine C. Minnite**

Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

022808

**Guy-UrielCharles**

Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest include Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council



Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:52 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Arrangements for June 30 Meeting

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:50 AM —



"Tom O'Neill"

06/01/2005 10:47 PM

To jthompson@eac.gov  
cc klynndyson@eac.gov  
Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?


Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.
2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?
3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?
4. Will the EAC issue the news release about the meeting and the panel?
5. What do federal regulation indicate that I may offer speakers we bring in from

022810

these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me--  


Tom O'Neill

022811

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:49 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: project kickoff meeting with EAgleton Institute

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:47 AM -----

Carol A. Paquette/EAC/GOV  
05/17/2005 06:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC  
Subject project kickoff meeting with EAgleton Institute

Commissioners -

We have tentatively scheduled May 26 at 2:30 for a kickoff meeting here with Eagleton Institute. What will happen at this meeting is Eagleton will introduce their key people and make a brief presentation on their approach to performing the provisional voting and voter ID studies. It will be an opportunity to ask questions, raise any concerns, and/or provide guidance as they begin this work. Please advise if you wish to attend this meeting. I expect it will last about an hour.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

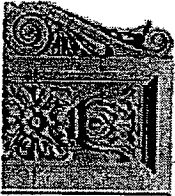
022812

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:46 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Prov Voting and Voter ID Reports

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:44 AM —



Bert A. Benavides/EAC/GOV  
06/19/2006 05:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc "Thomas O'Neill" [REDACTED] Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject RE: Prov Voting and Voter ID Reports

Karen, by copy I am attaching the referenced letter sent to Peter Weingart on 6-15-06.



Eagleton - Weingart, 6-16-06.doc

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
06/19/2006 04:51 PM

To "Thomas O'Neill" [REDACTED]  
cc Bert A. Benavides/EAC/GOV@EAC  
Subject RE: Prov Voting and Voter ID Reports

Tom-

Will ask Tom's office to get you a copy.

Regards-

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

022813



U. S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF THE EXECUTIVE DIRECTOR  
1225 New York Avenue, NW, Suite 1100  
Washington, DC. 20005

June 15, 2006

Mr. John Weingart, Associate Director  
Eagleton Institute of Politics  
Rutgers University  
191 Ryders Lane  
New Brunswick NJ 08901-8557

Dear Mr. Weingart:

During a recent briefing by staff, the EAC discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

We were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion, the EAC requests that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in Mr. O'Neil's June 8, 2006 letter to Chairman DeGregorio) be included in the final draft report on provisional voting which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final draft report and, from it, may develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final draft report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues.

Sincerely,

Thomas R. Wilkey

022814

"Thomas O'Neill" <tom\_oneill@verizon.net>



"Thomas O'Neill"

06/19/2006 04:30 PM

To klynndyson@eac.gov

cc

Subject RE: Prov Voting and Voter ID Reports

Karen,

I have not heard from Tom Wilkey. If he signed the letter you drafted for him last Tuesday, could you email me a copy while we await the arrival of the hard copy by mail. I probably don't need to remind you that we have only 11 days left on this contract and need to know how we should move ahead to complete it.

Tom O'Neill

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Friday, June 16, 2006 9:33 AM

**To:** [REDACTED]

**Subject:** Re: Prov Voting and Voter ID Reports

Tom-

On Tuesday I drafted a letter for the Executive Director's signature. He should be in touch today or Monday at the latest.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Thomas O'Neill" [REDACTED]

06/16/2006 08:49 AM

To klynndyson@eac.gov

cc

Subject Prov Voting and Voter ID Reports

022815

Karen,

Could you please give me your reading of the status of a response to our letter last week that raised some issues for resolution by the Commission on the completion of our work during the final few weeks of the contract period. The Team needs to know how to proceed during the remaining 2 weeks of the project.

Thanks,

Tom O'Neill

022816

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Letter to Commissioner DeGregorio

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM —



"John Weingart"  
<john.weingart@rutgers.edu>

06/08/2006 10:31 AM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>  
cc "Tom O'Neill" [REDACTED]  
Subject Letter to Commissioner DeGregorio



DeGregorioFinal.060806.doc Karen - I am attaching a copy of a letter we are just faxing and mailing to Commissioner DeGregorio. Thanks, John

--  
-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

022847